Newlands, Francis Griffith
National incorporation of -
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NATIONAL INCORPORATION OF RAILROADS.

SPEECH

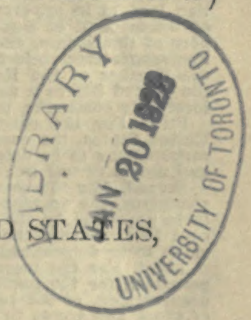
OF

HON. FRANCIS G. NEWLANDS,

IN THE

OF NEVADA,

SENATE OF THE UNITED STATES,



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SPEECH

OF

HON. FRANCIS G. NEWLANDS.

NATIONAL INCORPORATION OF RAILROADS.

Mr. NEWLANDS. Mr. President, in accordance with the notice I gave yesterday, I ask unanimous consent that the joint resolution (S. R. 86) creating a commission to frame a national incorporation act for railroads engaged in interstate commerce may be taken up for discussion.

The PRESIDING OFFICER. The Chair lays before the Senate the joint resolution referred to by the Senator from Nevada, which will be read.

The Secretary read the joint resolution, as follows:

Resolved, etc., That a commission consisting of fourteen members, one of whom shall be experienced in railroad traffic management, to be appointed by the President of the United States, one of whom shall be an attorney at law, to be appointed by the Attorney-General, one of whom shall be an expert in transportation, to be appointed by the Secretary of Commerce and Labor, one of whom shall be an expert in transportation law, to be appointed by the Interstate Commerce Commission, five of whom shall be Senators, to be appointed by the President pro tempore of the Senate, and five of whom shall be Members of the House of Representatives reelected to the Fifty-ninth Congress, to be selected by the Speaker of the House, shall frame and report to the Congress of the United States a national incorporation act for railroads engaged in interstate commerce, providing, among other things, as follows:

First. For the construction of interstate railroads throughout the United States, the amount of the bonds and stock to be issued by such corporations to be determined by the Interstate Commerce Commission, and not to exceed in any event the actual cost of such railroads;

Second. For the consolidation of railroads now engaged in interstate commerce, the amount of stock and bonds issued for such consolidation to be approved by the Interstate Commerce Commission, and not to exceed in any event the actual value of the railroads consolidated, such value to be determined by the Interstate Commerce Commission;

Third. For the increase of the issues of bonds or stock by such corporations for the purchase of connecting or intersecting lines, for new construction, or for betterment of the roads, the amount of such issue of stock and bonds to be determined by the Interstate Commerce Commission, and not to exceed in any event the cost of such new construction, the betterments, or the value of the intersecting or connecting lines acquired;

Fourth. For the classification by such railroad corporations of all articles of freight into such general and special classes as may be necessary and expedient, and also the fixing of transportation rates for freight and passengers by such railroads, such classification and rates to be subject to revision and amendment by the Interstate Commerce Commission upon complaint of shippers and localities;

Fifth. For the reasonable and just exercise of such power in classifying and regulating such rates of freight and fare by providing that such power shall be exercised by the Interstate Commerce Commission in such a way as to yield each railroad corporation a fair return of not less than 4 per cent per annum upon the value of its road and property, such value to be ascertained by the Interstate Commerce Commission;

Sixth. For the hearing by such commission of complaints made either by such railroad corporations or other party at interest regarding the decision of any rate, classification, order, or regulation adopted by such commission, and for decision thereon;

Seventh. For summary proceedings in the courts on the complaint of any railroad company or other party at interest concerning the decision of any rate, classification, order, or regulation adopted by such commission;

Eighth. For the imposition of a percentage tax upon the gross receipts of all such corporations in lieu of all taxes upon the property of

such railroad corporations and its stock and bonds, and in lieu of all taxes upon the bonds and stock of such railroad companies in the hands of stockholders, the property of such railroads and their bonds and stock to be entirely exempt from State, county, or municipal taxation, and for a just plan of distributing such taxes by the Federal Government among the States in which such railroads operate according to trackage or volume of business, or such other fair method as may be deemed advisable, such percentage to be so adjusted as to yield in the aggregate an amount equal to the taxes now paid by such railroads, and to be increased gradually through a period of ten years, until it reaches an aggregate of 5 per cent upon the gross receipts of such corporations;

Ninth. For the correction of existing abuses, and for the prevention of rebates, preferences, and discrimination, whether relating to communities or individuals;

Tenth. For the creation of a pension fund for railroad employees disqualified either by injury or by age for active service, by setting aside a percentage of the gross receipts of the railroads in a fund in the Treasury, to be invested according to rules and regulations made by the Interstate Commerce Commission, such pension system to be devised, changed, and modified from time to time by the Interstate Commerce Commission;

Eleventh. For the arbitration of all disputes between such railroad corporations and their employees as to compensation, hours of labor, and protection to life and limb.

SEC. 2. That the sum of $5,000 is hereby appropriated for the expenses of such commission.

Mr. NEWLANDS. Mr. President, this joint resolution was introduced by me on the 4th of January of this year. It is the result of a hearing before the Interstate Commerce Committee of the Senate on the 16th day of December, just prior to the holidays, at which Mr. Bacon, chairman of the Interstate Commerce Law Convention, appeared and urged the passage of the Quarles-Cooper bill for the enlargement of the powers of the Interstate Commerce Commission. During that inquiry I questioned Mr. Bacon regarding a plan, which I have had under consideration for some time, as to the simplification and unification, under one national taxing power and one national rate-regulating power, of the railroad systems of this country. After these inquiries were made, and the questions answered, there was some discussion among the Senators present as to the principles of this proposed national incorporation act, and it was suggested that I should bring the matter up for discussion in the Senate.

I therefore endeavored to frame a national incorporation act, but I found that in doing so I would be obliged to enter into a great many matters of detail not essential to the elucidation of the principles for which I contended, and I feared that if I should frame an elaborate bill more attention would be given to the details than to the principles. Therefore I concluded to draw up a joint resolution providing for the appointment of a commission, consisting of four experts in transportation and transportation law, five Senators, and five Representatives, and instructing them to frame and report to Congress a national incorporation act, prepared upon certain principles declared in the joint resolution. It is in reference to those principles that I wish to address the Senate today, in the hope that the subject may become a matter of discussion, and that discussion here may instruct the minds of the members of the Interstate Commerce Committee regarding this important question.

RAILWAY EVOLUTION.

Mr. President, we find that to-day in this country there are about 200,000 miles of railroad in the ownership and control of

over 2,000 railroad corporations incorporated under the laws of the various States. We find that of those 2,000 corporations only about 600 are operating companies, the others by some method having come under control of these operating companies. As to these operating companies, we find that they have fallen under the control of certain systems. So that to-day it is a well-recognized fact in this country that almost all the railroad trackage of the country is under the control of eight or ten systems, each of which is under the absolute direction and control of either a single man or a group composed of a small number of men.

So, as a matter of fact, although our railroads are incorporated under State laws, the boundary lines of the States have been practically ignored in the evolution of railroads, and to-day we speak familiarly of the Harriman system, of the Hill system, of the Morgan system, and of the Pennsylvania system, each system covering not simply a single corporation, but many corporations joined together, often without express sanction of the law, by some method of lease or trackage or traffic arrangement or through holding companies, and each system under the absolute control either of one man or of a set of men.

I regard this as a natural and practical evolution of the railroad business, resulting, so far as the economic operation of the roads is concerned, in advantage and not disadvantage, and operating, so far as the convenience of the public is concerned, to their advantage and not to their disadvantage, and only likely to be operated against the interest of the country when we consider the questions of rates, of rebates, and of discriminations.

It is with reference to these matters, then, that the railroads should be brought under some form of unified control, and that unified control should be exercised in such a way as not to impair the initiative, the energy, and the enterprise of the operators of these great railroads.

NATIONAL POWER.

Now, I assume that if to-day there were no railroads in this country and the United States should conclude to enter upon the construction of interstate railroads, under the interstate-commerce power of the Constitution, the power of the Government to do so would not be questioned. It has not only the power to regulate commerce, it has the power to create the instrumentalities for the exercise of that power; and if in its judgment it concludes to enter upon the building as a Government enterprise, of interstate railways, for the purpose not only of exercising the interstate-commerce power of the Constitution, but the power conferred by the Constitution upon the General Government with reference to the mails and with reference to the military defense, I imagine the power would not be questioned.

I also assume that if the Federal Government constructed and owned these railroads as Federal instrumentalities for the exercise of national powers, the National Government would not permit them to be embarrassed or impeded in their operations by State legislation—by State legislation under the exercise of the taxing power, for the power to tax would involve the power to destroy; and the Government of the United States, as a sovereign, exercising its power on the soil of each one of

the States, has the right to exercise it unimpeded and unembarrassed by the taxing power in the State.

So, also, I take it for granted that it would be unembarrassed by the rate-regulating power of the various States; that power which now exists over domestic rates, interstate rates, for that power, if exercised, would have a tendency to impede and perhaps destroy the Federal instrumentality just as much as would the power of taxation. It would probably impede and embarrass it even to a greater extent than the exercise of the power of taxation.

So, starting off with that assumption, comes the further assumption that if the Federal Government chooses to incorporate private corporations to perform the public service of the country, for the purpose of carrying out this constitutional power, it can also exempt such railroads in private ownership, but subject to public control, from any power of the States that embarrasses or tends to destroy the Federal instrumentality, just as much so as if it itself owned the railroads.

Now, then, assuming that the Federal Government has the power to incorporate railroad companies for the purpose of carrying out the interstate commerce power, and that these railroads can be exempted from local taxation and from local regulation, then we have the question unembarrassed. We have railroads organized under a national law, their stocks and bonds fixed as to amount by law or by the Interstate Commerce Commission, so as to prevent inflation or the watering of stocks and bonds; and we have one taxing power—the Federal Government; and we have one rate-regulating power—the Federal Government.

I insist upon it that in order to secure the proper control and regulation of the railroads of the country it is essential that we should not have a confusion of taxation and a confusion of rate regulation.

Mr. BACON. Will it interrupt the Senator if I ask him a question right here? If it will, I will defer it.

Mr. NEWLANDS. I would prefer it if the Senator would let me proceed consecutively, and then I will answer any question later.

STATE LINES SHOULD BE DISREGARDED.

It seems to me it must be manifest that if we are to have a system of railway extending from New York to San Francisco, running through ten States, and if we are to apply the principles laid down by the Supreme Court of the United States as to the control over rates, and if we are so to adjust those rates in the exercise of the interstate commerce power as that there shall be a fair return to the corporations upon the value of their property, it is essential that there should be but one body to value and but one body to fix the return. And yet under existing conditions we would have ten States exercising the taxing power regarding that system of railway, ten States through their legislatures or their local commissions valuing the railroads, and ten States fixing the return in the shape of interest upon the valuation.

It is impossible to assume that they will all come to the same conclusion, and if they do not come to the same conclusion we will have each one of those States fixing a different valuation upon the part of the road that goes through that State; each one of

the States taxing the road upon varying systems; each one fixing a different return in interest upon the valuation of the road, and above and beyond all that, we will have the United States Government making its own valuation through the Interstate Commerce Commission, and the United States through that Commission fixing the rate of return in the shape of interest, and we will have varying rates of interest, interest varying all the way from 4 to 10 per cent.

Mr. SPOONER. I should like to ask a question for information. The Senator from Nevada has evidently given this subject much thought. I have listened to him with interest, and I do not want to disturb him. I should like to ask him a question in order to get his views. If the Senator would prefer, I will not ask him now.

I want to know simply whether the Senator intends to assert that because Congress incorporates a railway corporation to transport products from one State to another, thereby the States, purely as to domestic commerce, lose their right of regulation and their right of taxation?

Mr. NEWLANDS. I think under a well-ordered system they ought not to have that right.

Mr. SPOONER. But does the Senator claim there is any such system under the Constitution now as would lead to that result, provided only the incorporation be a Federal incorporation?

Mr. NEWLANDS. There is no such system now. What I propose to do is to shape the way for such a system.

Mr. SPOONER. Does the Senator think Congress has power by creating an interstate or Federal corporation to operate a railroad from State to State to dispossess in any way under the Constitution as it now exists the power of the State to regulate purely State commerce, although carried on by a Federal corporation?

Mr. NEWLANDS. I do think so as to a national corporation; that is to say, the State is not dispossessed of its power, but its exercise can not be applied to a national instrumentality.

Mr. SPOONER. I did not understand the Senator.

Mr. NEWLANDS. The inconveniences of this system of divided control over these great systems of railroads by the various States in the way of taxation and rate regulation and by the National Government in the shape of interstate regulation must be obvious, and the question is whether we can organize a system that will work out justice to the States and which will simplify and unify the entire railroad system of the country.

METHOD OF TAXATION.

First, as to the method of taxation, the resolutions which I have introduced suggest that the following method should be pursued: That the Interstate Commerce Commission should have the power to value a railroad constructed under this national act, or railroads consolidated under this national act, and should have the power to fix a return in the shape of interest upon that valuation.

As to taxation, the simplest form of taxation would be a tax of 3 per cent upon the gross receipts of such corporation. I have fixed 3 per cent because I find upon calculation that the total gross receipts of all the railroads in this country to-day aggregate nearly $2,000,000,000, and that the total taxes paid

by all the railroads amount to about $56,000,000, and that is just about 3 per cent of the gross receipts.

I therefore fix the present percentage at 3 per cent, so as to insure payment by the railroads of the amount which they now pay. But I provide for a gradual increase of that tax, extending over a period of ten years, at the rate of one-fifth of 1 per cent per annum until it reaches 5 per cent, for there is general complaint throughout the country that the railroads are not taxed in proportion to other property in the country, and we all know that an agitation is going on in almost every State in the Union as to the increase of railroad taxes. I assume that 5 per cent—possibly it should be 4 per cent—would be a fair percentage for the railroads to pay upon their gross receipts, and if we make the increase a gradual one, extending over a period of ten years, we will, whilst increasing the taxation, not do it so rapidly as to wrench the finances of the railroads of the country.

Now, the advantage of this percentage tax is this: It makes the tax a matter of mathematical certainty.

Mr. SPOONER. A franchise tax.

Mr. NEWLANDS. A franchise tax. What is the condition now? No railroad in the country knows what its tax next year is going to be. They are subject to the caprice or the judgment or the passion or the prejudice of hundreds of assessing officers throughout the entire country, boards of equalization, and of State legislatures. If you are going to make railroading an exact science we should make their taxation a matter of mathematical certainty, and I know of no better method than this percentage tax upon the gross receipts, for the gross receipts are a matter of record on the books of the corporations, and besides that the railroads are compelled now under the interstate-commerce law to make reports under oath to the Interstate Commerce Commission regarding the gross receipts.

THE RAILROADS IN POLITICS.

There will be no opportunity of evading the tax. There will be no temptation to engage in politics with a view to controlling the assessing officers and the equalizing bodies. We know to-day that as a result of the taxing power and of the rate regulating power as to domestic rates that are possessed by the various States of the Union the railroads are invited into politics. It is impossible for them to escape politics. The result is that they take part in the election of every officer whose duties are likely to trench in any degree upon the taxing power or the rate-regulating power.

These railroads do everything systematically, and hence entering into politics with them means the organization of a political machine in every State in the Union, and as they pursue the lines of least resistance it oftentimes means the alliance of the railroads with the corrupt element of every community.

So it is that the railroads are present everywhere in politics, forced to be in politics by the existing condition of things, for their properties lie between the upper and the nether millstone—the upper millstone the taxing power, and the nether millstone the rate-making power. Between the two they can be crushed, and it is not in human nature to expect them not to take an interest in politics, and if they take an interest in politics that interest is often likely to be exercised in such a way

as to be to the disadvantage and injury of every community in which it is exercised. If they exercise no political power they are liable to be held up by the blackmailer or attacked and injured by the demagogue or to be prostrated by storms of popular violence. On the other hand, if they secure political control they are likely to use it to promote extortion and monopoly.

The purpose of this resolution is to unify and simplify the railroad systems of the country; to recognize the recent evolution in railroading, under which the operation and management of almost the entire railroad mileage of the country has come under the control of about ten well-known systems; to place such systems under national control; to make the taxes of the railroads fixed and certain, and to provide for fixed dividends, so that hereafter any increase of business will tend mathematically either to a betterment of the roads, to an increase in wages, or to a diminution in rates.

By unifying the railroads of the country into scientific systems under a national incorporation act, and consolidating the control now exercised by legislatures and commissions of forty-five different States in the hands of the Interstate Commerce Commission, and by substituting a simple tax mathematically ascertained, to be divided justly between the States, it would be easy to check and destroy the existing system of rebates and discriminations and to correct every existing abuse. The public would be protected from extortion and the railroads against popular caprice and violence.

DISTRIBUTION OF TAX AMONG STATES.

Now, you say that it will be utterly impossible to provide for a percentage tax imposed by the Federal Government upon the franchise of these corporations, because the States will not assent to it—will not agree that their revenues shall be taken away. I mean to say that the representatives of the States will not agree to the passage of a national incorporation act; that the local sentiment will be so strong they dare not vote for it; and I believe that sentiment must be met. You can not violently wrench the financial system of every State and of every municipality in this country when such financial systems at present largely draw their support from the railroads of the country.

So I provide that this percentage tax shall be paid into the Federal Treasury and shall be divided among the various States by some fair system of distribution, either in proportion to trackage or in proportion to the volume of business furnished by each State.

Mr. PLATT of Connecticut. The State has nothing to say about the division?

Mr. NEWLANDS. The State has nothing to say. That will be left to the justice of Congress, and I assume that Congress will so exercise the power as to give each State approximately the revenue it now receives; and if its percentage is gradually increased from 3 to 5 per cent, resulting in a total income not of $56,000,000 annually, as at present paid, but in the ultimate of over $80,000,000, the amount coming to each State will be increased instead of diminished. So it will be to their interest to support this very measure so far as their financial conditions are concerned. They would be relieved of the entire expense of machinery for the imposition and the collection of these

taxes. They would receive their proportionate amount, determined by some fair rule, either according to trackage or the volume of business.

So I assume that if this act can be constitutionally passed it can be shaped in such a way as to taxation as will not meet the violent opposition of the States, an opposition, of course, which would be reflected here in an attempt to defeat the measure.

RATE REGULATION BY STATES.

Now, as to the rate-regulating power, my judgment is, and it is the belief of almost all experienced men in this country, that the rate-regulating power exercised by the State has not, as a rule, been beneficially exercised. I believe that it is the experience of every State in the Union, or almost every State, except perhaps Massachusetts and one or two other well-regulated States, Texas among the number, that this power has not been exercised satisfactorily.

We find that if the power is intrusted to the legislature it is not exercised wisely or scientifically. It is utterly impossible for a legislative body to act upon so complicated a matter. If the power is intrusted to a State commission we find that that State commission is always in politics.

As a rule the members are elected by the people, and the powers of the railroads are exercised in every State in the Union with reference to the election of these commissions, and their powers are so exercised as to result in the control of the commission or in the neutralization of the commission.

We all know that the railroads of the country in their entirety, having 1,000,000 of the voters of the country in their employ, can naturally rely upon their employees in any contest affecting the interest of the corporations themselves. It is true the employees will take strong ground against the corporations themselves with reference to their own matters and with reference to their own rights; they will wrangle with the management; they will engage in strikes in contention for their own rights; but whenever it comes to imperiling the common fund out of which the profits of the operators and the wages of the employees are alike paid, you will find that the employees of the railroads always rally to the support of the railroads.

We have about 13,000,000 voters in this country. Over 1,000,000 of them are in the employment of the railroads. Each one of those voters is able to influence one or two votes more. I ask you, in any question affecting the interests of the railroads of this country, with this disposition of the employees to stand by the railroads in any matter affecting their common interest, how the people can ever expect to control when the balance of power is practically held by these great corporations owning this vast property, representing $10,000,000,000 in value, between the upper and nether millstone of taxation and rate regulation? So that while the States have nominally the power, it is either not exercised or it is not exercised wisely, and it is not exercised wisely because of the complication of the situation.

I ask you how each of ten regulating bodies, operating upon a system of railroads running through ten States, can carry out the principles declared by the Supreme Court as controlling regulating bodies in the determination of rates, and how are they going to come to the same conclusion as to the valuation of the

roads and as to the rate of interest which should be allowed? If the States make an undervaluation or if they fix a rate of interest unduly low, that affects the gross income of the corporation; and then when the regulating power of the Federal Government as to interstate rates is exercised, I ask you how it can be exercised properly if the income has been so seriously affected by the local action of the States?

NATIONAL RATE REGULATION.

Now, then, as to rate regulation, I should put this power in the hands of the Interstate Commerce Commission—the power simply to revise and amend the classification and the rates made by the railroads themselves. I would not put this power primarily in the hands of the Commission, because the power of classification itself and the power of rate-making involve knowledge of numerous details—expert knowledge. So I would intrust that to the railroads themselves, giving, however, the Interstate Commerce Commission full power to revise and amend any classification or any rate. Whether or not such decision should go into immediate effect or whether some provision should be made for an immediate resort to the courts and a summary determination by the courts is a mere matter of detail.

So also I would provide, by the most stringent provisions, for the punishment of rebates and discriminations. I take it that under existing conditions the evils of which the American people have to complain to-day are mainly questions as to rebates and discriminations, both as between individuals and as between communities.

Taking the income of all the railroads in the country it can hardly be claimed that it is very excessive. The rates of some railroads may be too high, but they are perhaps offset by the rates of other railroads that are too low. We know, as a matter of fact, that the railroads of this country are to-day receiving a return upon $60,000 a mile, whilst in England they are capitalized at $200,000 a mile, and in Germany they are capitalized, I believe, at $100,000 a mile.

It is true that our roads may not have been so expensively constructed as the roads over there; they may not be so perfect in their construction and their ballasting, and their depots and station houses may not be so perfect; but certainly you can not say that there is a very excessive capitalization of the railroads of this country in the aggregate, when you find that they are capitalized at $60,000 a mile, while the railroads of Germany are capitalized at $100,000 a mile, and of England at $200,000 a mile.

If this power as to rebates and discriminations is given to one regulating and controlling body it can be much more efficiently exercised than it can be if there are numerous bodies. The attention of the country will be centered upon one responsible commission, and it will be utterly impossible for that commission to work for any great period of time an injustice to the country.

Now, Mr. President, these are in brief the outlines of the suggestions covered by my resolution. I wish to say that the resolutions are simply tentative, simply thrown out for discussion. It is possible it may be ascertained that all these things can not be embraced within the constitutional power of

the Federal Government. I am inclined to think from my brief examination of the authorities that they can be, but I do not pretend to have made an exhaustive inquiry upon this subject.

Mr. FORAKER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nevada yield to the Senator from Ohio?

Mr. NEWLANDS. Certainly.

Mr. FORAKER. I understood that the Senator was about to close.

Mr. NEWLANDS. Yes.

Mr. FORAKER. And I wanted to ask him before he takes his seat to explain to us, if he can, how he is going to bring about the incorporation under Federal statute of all the railroads that are now engaged in interstate-commerce business in the country.

HOW BROUGHT ABOUT.

Waiving all question of doubt and assuming every phase of the proposition as to its constitutionality and validity in every sense, how is it to be brought about? Here, for instance, is the Pennsylvania Railroad Company. It is not incorporated under any Federal statute. It has been an incorporated company for a great many years. It embraces a great many subordinate companies, I understand. How are we going to get all those companies reincorporated under a Federal statute, if we have one? I mean if they do not want to obtain it.

Mr. NEWLANDS. My answer is that I would endeavor to shape the bill in such a way that it will partially drive and partially coax the railroads into national incorporation.

Mr. FORAKER. Let us confine ourselves first to those who are to be driven. I am asking for information. The proposition of the Senator is a very interesting one.

Mr. NEWLANDS. We could do this. We could provide in the act that no railroad company should engage in interstate commerce unless incorporated under the national act. If that were done, each State corporation incorporated under the laws of a single State could do business inside of that State, but it could make no arrangement or no contract there relating to interstate commerce.

Mr. FORAKER. Does the Senator think that prohibiting a railroad from engaging in interstate commerce would be a regulation of interstate commerce?

Mr. NEWLANDS. I think it would be. The United States Government has the right to choose the instrumentality for the exercise of that power, and if it determines to incorporate a railroad company under a national incorporation for that purpose it can prevent the exercise of interstate commerce by any other organization.

Mr. SPOONER. Will the Senator go so far as to say that Congress has the power also to provide that no State corporation engaged in production shall put its product into interstate commerce unless it becomes a Federal corporation?

Mr. NEWLANDS. No; I am not prepared to go that far. I wish to say right here that this suggestion does not follow the recent report of Commissioner Garfield. The suggestion of this bill was made by me in the Senate Interstate Commerce Committee before that report appeared, and the suggestion was the result of thought for a considerable period of time and of

discussion by myself with others who are interested in this question.

STATE COMMERCE.

Mr. SPOONER. If I may, with the permission of the Senator, I will state that I have listened with interest to his observations, but I think he assumes too many propositions. In the first place, the Senator assumes, and I have never understood it to be the law, that the power in Congress to create a railway company to engage in interstate commerce is an incident of the great power back of that to construct railways all over the United States and become itself a governmental carrier of freight and passengers.

Mr. NEWLANDS. I will ask the Senator does he question the power?

Mr. SPOONER. I question the power very much.

Mr. NEWLANDS. Of the United States Government?

Mr. SPOONER. I question the power very much upon the grounds suggested by the Senator. I am not able to see that the power to regulate commerce among the States involves the power in the Government to become a great universal governmental carrier itself to the exclusion of private enterprise and commerce between the States. I admit—and the Senator need not assume that, because it is settled—that Congress, in the exercise of the interstate commerce power, may create instrumentalities through which commerce may be carried on among the States. That power has been exercised before. The Northern Pacific Railway was constructed from the Lakes to the ocean under a Federal charter, and the Supreme Court has settled that.

But the point to which I wish to call the Senator's attention and which is troubling me is this great proposition to dismantle the States. One comes out every day in some phase or guise. A new phase is the Senator's assumption that because Congress has the power to create a railway company authorized to construct and operate a railway between States it follows that Congress may take under its protection and domination purely State commerce, commerce originating in a State and ending in a State. Now, where does Congress obtain any power under the Constitution to do that thing?

The Constitution of the United States, unlike the constitution of a State, is a grant of power. When the exercise of a power by Congress is proposed we look to see whether expressly or by implication it is granted by the Constitution.

Mr. NEWLANDS rose.

Mr. SPOONER. Will the Senator permit me? I will be through in a moment. I only want to put a question.

On the contrary, the constitution of a State is not a grant. It is a limitation. The legislature of the State possesses all legislative power except it be deprived by some restriction in the Constitution from the exercise of some function which upon general principles is legislative.

Now, the power to regulate commerce among the States is one thing. That is conceded to exist. But how does the Senator spell out of that, and if he can not spell it out of that where does he find in the Constitution the power to regulate commerce in the States and to take away from the State the power to regulate commerce within the State, whether the car-

rier be operating under a Federal charter or under a State charter?

The Senator is a lawyer of learning and ability, and he has thought much on this subject. I should like to have him, if in accord with his inclination, enlighten me upon this question, which has troubled me.

Mr. NEWLANDS. The Senator has admitted that the Federal Government can, if it chooses, construct an interstate railway——

Mr. SPOONER. No; I have not.

Mr. NEWLANDS. Extending from New York to San Francisco.

Mr. SPOONER. I have not.

Mr. NEWLANDS. I understood you to so admit.

Mr. SPOONER. I said this: I do not know what may be decided about it, but I am not able at this moment to see how the power to regulate commerce among the States can be twisted into a power to carry on all commerce as a Government between the States. To *regulate* commerce carried on by a Federal corporation or carried on by a State corporation between the States is one thing.

The proposition for the Government to acquire all the railways in the United States and construct thereafter all the interstate railways in the United States and become a governmental carrier is another thing. What I admitted was that Congress has clear authority to create Federal railway corporations empowered to construct, maintain, and operate railways between the States. That has been decided.

Mr. NEWLANDS. Now, take the case in which the Federal Government did form a corporation for that purpose—the Union Pacific Railway. Does the Senator doubt that the United States Government could itself have built, if it had chosen so to do, that railroad instead of intrusting it to a corporation created by the National Government?

Mr. SPOONER. Yes, I doubt it to mainly transport *for hire* persons and freight; but, Mr. President——

Mr. NEWLANDS. Very well; if the Senator's contention——

Mr. SPOONER. That for purely military purposes the Government might do it in a certain case is one thing. I am talking about the general subject of commerce. This is the question I wish to put to the Senator: Does the Senator claim that Congress has jurisdiction over purely State commerce?

Mr. NEWLANDS. No; I do not.

Mr. SPOONER. Very well. Then I should like to have the Senator indicate upon what principle it is he contends that the mere incorporation by Congress of a Federal railway corporation authorized to construct, maintain, and operate a railway from State to State would deprive the State of its power to regulate purely State commerce carried on by that corporation? That is what troubles me.

There is another thing I should like to know.

Mr. NEWLANDS. One at a time.

Mr. SPOONER. I should like to have the Senator explain how it is that the State can be deprived of its power of taxation of property solely in the State and business that is purely State, not interstate, business. Those things trouble me a little.

Mr. NEWLANDS. Mr. President, I do not contend for a moment that the Federal Government has the power to exercise the State power of taxation. I do not contend for a moment that it has the power to exercise the State power of regulation of intra-State rates. All that I do contend is that when the Government itself constructs a railroad, in the exercise of the powers conferred upon it by the Constitution, whether those powers relate to the mail or the military defense or the regulation of interstate commerce, that that instrumentality for the exercise of the national power which the Federal Government has called into being can not be taxed out of existence or regulated out of existence by any State.

That is all I contend. I contend that if a railroad is built by the Government no power could be exercised by any State over that railroad which would impair or destroy its efficiency, because the National Government is building that railroad as a sovereign in a territory under its jurisdiction, for so far as the sovereign power of the United States is concerned, the land embraced within the area of every State is subject to that sovereignty, and that sovereignty can not be impinged upon or interfered with, or harassed or impeded in any way by the State government. That is all I contend for. The Senator seems to think I am contending that the National Government is to go into the business of regulating intrastate rates.

Mr. SPOONER. If the Senator will permit me——

Mr. NEWLANDS. All I contend for is that as to this instrumentality of the Federal Government the State can not so exercise its powers as to destroy or impair its efficiency.

Mr. SPOONER. Mr. President——

The PRESIDING OFFICER. Before placing the unfinished business before the Senate, the Chair will inquire what disposition the Senator from Nevada desires to have made of his resolution?

Mr. GORMAN. I suggest that by unanimous consent the regular order laid aside temporarily.

The PRESIDING OFFICER. Unanimous consent is asked that the regular order be temporarily laid aside.

Mr. BEVERIDGE. I should be very glad to agree to that if it were not perfectly plain, even to one who has listened to this most engaging discussion for only a moment, that it will not be concluded at a very early period. I suggest that this discussion, which has within itself the possibilities of an interminable one, shall go over until the morning hour to-morrow, and that we proceed with the unfinished business.

* * * * * * *

Mr. NEWLANDS. I will inform the Senator that I shall take only a few minutes more. I should like to reply to the Senator from Wisconsin.

Mr. BEVERIDGE. Upon that understanding I will be very glad indeed to consent that the Senator shall conclude his remarks.

Mr. NEWLANDS. I have not completed my statement. I judge that there are a number of Senators on the floor who would like to question me with reference to the various suggestions I have made, and I should like to have the opportunity of replying to them.

The PRESIDING OFFICER. The pending statehood bill will be temporarily laid before the Senate, as it becomes the duty of the Chair to place it before the Senate. The Senator from Maryland requests that it be temporarily laid aside. Is there objection?

Mr. BEVERIDGE. I consent to that with the understanding as I have given notice, that we shall complete the reading of the statehood bill to-day. That is all.

The PRESIDING OFFICER. The Senator from Nevada will proceed.

Mr. NEWLANDS. Mr. President, I suggested to the Senator from Wisconsin that if this act were passed it would take effect by partially driving and partially coaxing the railroads into a national corporation. As to driving, that could be done by depriving railroads not incorporated under the national act of the power of engaging in interstate commerce. You will recollect that when the national banks were incorporated the banks of the country were practically driven into national incorporation by a tax imposed upon the currency of the State banks, and I think there are other precedents for such action.

BENEFIT TO EXISTING RAILROADS.

Now, as to coaxing, I believe that the great systems which are now organized can not be satisfied with existing conditions. I believe that in many cases in working out the practical evolution of railroading, which I think has been in the main beneficial to the country, they have evaded the law and have broken the law. I believe that many of the consolidations now existing and operating without injury to the country are unlawful, and I believe that the railroad operators know it.

There has been a gradual change in the whole system of management of the railroads in this country. Forty or fifty years ago there were great frauds in the construction of railroads, frauds upon the public and frauds upon the stockholders. The era of frauds in construction has almost passed away. At another time there was an era of fraud in the management of railways when the directors were the worst enemies of the stockholders, and plundered the very properties that were intrusted to their charge. That era has for the most part passed away.

So far as the relations between the directors of the railways of the country and the stockholders are concerned, there is practically no complaint today. The whole operation of the railways of the country has been lifted up to a higher moral plane so far as the relation of the directors and stockholders is concerned.

But, so far as the public is concerned, we have this system of rebates and discriminations—discriminations for or against communities, discrimination for or against individuals, rebates given to individuals and to favored interests. Many of these discriminations and rebates are absolutely forced upon the railways themselves. Some of them doubtless are voluntary, inspired by stockholders who are interested in these great trusts and combinations and who seek through their power in transportation companies to secure favored rates. But in other instances the railroads are the victims themselves of the men who desire these rebates and discriminations.

A great trust, taking two competing lines from Chicago to San Francisco, can so juggle its negotiations with those two

railroads as to make each of them apprehensive that it will lose the trust's business, and the very competition forced upon them by the law makes them seek to get the business, and to seek to get the business in the ordinary business methods by giving some advantage. That is what competition means in all other business. It means giving a better rate or a better material to the purchaser, and in this country the giving of a better rate is absolutely forbidden by law. The giving of a better service possibly is not to the same extent forbidden by law.

So it is that many of the traffic managers of the country are the victims of the great trusts and combinations which are seeking by juggling with the transportation system to get an advantage over their competitors.

Now, it seems to me that the gentlemen in the direction of railroads who are honestly administering them in the matter of construction, who are honestly administering them in the matter of operation, and who are honest in their relations to the stockholders, may be credited with some desire to get upon an honest plane with the public itself, and I believe that we should expedite them in that aspiration if they indulge it.

Besides that, I believe this system is injurious to them. They know it is going to result in a storm of popular indignation that will lead to agitation in this country, resulting in an increase of taxation and resulting in blows being administered by the public to them wherever blows can be given.

So it seems to me that they, as rational business men, ought to desire some scientific adjustment of this question, resulting in having their taxes mathematically adjusted by the law, and not subjected to the complications of thousands of assessing officers and fifty or more assessing bodies throughout the entire country, and resulting in one valuation by a tribunal of character and dignity, and resulting in one determination of the rate of interest as a return on such valuation.

CONSTITUTIONALITY OF NATIONAL TAX.

Mr. BACON. Will the Senator permit me to ask him a question right in that direct connection, which brings back the inquiry I desire to make of him? The fundamental proposition of the Senator is that in order that the proposed system may be made effective there shall be the exemption of these private corporations, chartered by the Federal Government, from liability to State taxation. I understand that to be the Senator's proposition.

Mr. NEWLANDS. I do not regard that as essential, but I think it would make the whole system much more effective and satisfactory both to the public and to the railroads.

Mr. BACON. I understood the Senator to go to the extent of saying that the exercise of such a power by the States would involve the power in a State to destroy. If that were the case it is certainly essential. Now, the inquiry I desire to propound to the Senator upon that proposition is this: The railroads are properly and essentially property located within a State. It is a part of real estate. If the States can not impose a State tax, and if a tax is imposed by the General Government it is necessarily a direct tax and not an indirect tax.

The question I desire to propound to the Senator is this: Whether, in the first place, the State could impose a direct tax which would cover railroads and not relate to other property;

and, in the second place, whether there would be any possibility of imposing a direct tax by the Federal Government upon that species of property, or any other species of property within a State, and complying with the requirements of the ninth article of the Constitution, which is in these words:

No capitation or other direct tax—

This is a limitation upon the powers of Congress—

shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

That is the inquiry I desire to propound to the Senator; and in that the further inquiry whether, if such a tax could not thus be laid, the scheme of the Senator would not necessarily involve the entire exemption of those private corporations from any taxation, either State or Federal?

Mr. NEWLANDS. I will state to the Senator that the tax which I would impose would not be a direct tax; it would be in the nature of a franchise tax, measured by the gross receipts of the corporation; and I have no doubt that that could be shaped in such a way as to avoid the objection of direct taxation, which is, of course, forbidden by the Federal Constitution.

Mr. BACON. If the Senator will pardon me——

Mr. NEWLANDS. I want to call the Senator's attention in this connection to the war-revenue act, which fixed a tax upon oil refineries and sugar refineries—a tax of one-eighth of 1 per cent upon their gross receipts over $250,000. That tax went into effect; it was paid for years until the law was repealed, and I never heard it questioned. I believe there are other taxes of that kind which have been imposed by the revenue laws of this country. I think that in the war-revenue law the Senator will find precedents for such a tax as I would impose here. A license or franchise tax measured by the gross receipts is quite a distinct thing from a direct tax upon the property itself.

Mr. BACON. The Senator, then, would recognize the fact that so far as the tax upon the property itself is concerned it may either be imposed by the State or not at all?

Mr. NEWLANDS. Or not at all.

Mr. SPOONER. Mr. President, I was not aware until this joint resolution was read that any such proposition was pending in the Senate. I have had no desire to involve my friend from Nevada in any elaborate discussion at this time. I have put my questions to him in no spirit of controversy. I want to finish, if I may, in a very few moments the line of thought which I was intending to follow when I was interrupted.

There is nothing clearer in the world than that essential instrumentalities of the Government are not subject to taxation by the States—are not subject to regulation by the States. The Senator is quite right and it was said in McCulloch *v.* Maryland that the power to tax involves the power to destroy. The power on the part of a State to impede in any way purely and confessedly governmental instrumentalities and functions would be intolerable.

In the same way some of the functions of the State are entirely beyond the power of Congress to impede or embarrass. There is this imperium in imperio. The States, within certain limits, have always been supposed to be supreme, just as the Federal Government, within certain limits, is and must be

supreme. It is not in the power—although the power of taxation given by the Constitution is very broad—of the Federal Government to tax the judicial processes of the States. Otherwise it might destroy them and impede the administration of justice within the boundaries of a State. That can not be done.

The trouble with my friend is that for the moment—he never confuses anything long in his mind—but for the moment in this discussion he confuses, it seems to me, instrumentalities that are governmental with instrumentalities created by Congress which are not strictly governmental in function. Whether the Government may build and operate railways between the States for a purely governmental purpose is an abstraction, because no such thing is proposed by the Senator. There is no such proposition in this joint resolution as that the Government shall engage in the construction and operation of railways, but if the Government built a railway for governmental use from one State into another in its governmental uses it would not be subject to interference by the State, but the carrying of commerce within the State from point to point for hire the Senator would not say is a governmental function. But let that go, and let us come back to what is proposed here.

The Senator was referring to the Union Pacific Railway Company, a Federal corporation. I had referred to the Northern Pacific Railway Company, which was a Federal corporation, an instrumentality which the Supreme Court has held Congress may create under the commercial power of the Constitution. Now, will the Senator say that by reason of the mere fact that the Northern Pacific Railway Company was a Federal corporation within the constitutional capacity of Congress to create, lawfully endowed with power to construct, maintain, and operate a railway from State to State through many States, the State of Montana was, because of the Federal characteristic or origin of the corporation, deprived of the power of regulating the commerce carried by that corporation and the charges exacted by it on commerce originating and ending in the State of Montana; and if in Montana, of course in all the States between the Great Lakes and the Pacific? Will the Senator seriously project the proposition, and stand sponsor for it, that in this way the State can be deprived of the power to regulate commerce within the State?

Mr. BACON. And taxes within the State.

Mr. SPOONER. That is another thing—commerce within the State. Would the Senator from Nevada say, if the Southern Pacific Railway Company were a Federal corporation, that as to commerce originating in California and ending in California, the State of California would have no power to regulate the charges of that corporation so as to protect its people against oppression by that corporation as to purely intrastate commerce? Would the Senator say that Congress has the power by any provision incorporated in the charter of a Federal corporation, authorized to build and operate railways from State to State, to take away from the State its power over purely State commerce?

Mr. NEWLANDS. Does the Senator desire an answer?

Mr. SPOONER. Yes; I should be glad to have an answer.

Mr. NEWLANDS. I will state to the Senator that as to the power of regulating intrastate commerce my proposition does

not involve the taking away of that power from the State. It can exercise that power over corporations organized by that State and doing business in that State; it can exercise that power with reference to corporations organized by the United States under a national incorporation act, unless in the incorporation act there is a declaration that that power shall not be exercised so far as the Government instrumentality is concerned. It leaves the power still existing, but it simply provides that that power shall not be exercised as to the property of the National Government or as to the instrumentality created by the National Government.

It is true that in the case of McCulloch *v.* Maryland——

Mr. SPOONER. Does the Senator, then, say that the power now exists, but can not be exercised?

Mr. NEWLANDS. I contend that if the power of regulation involves the impairment or impeding the operation of a Federal agency or of property that belongs to the Government——

Mr. SPOONER. Mr. President——

Mr. NEWLANDS. Now, just let me go on a little further. I will state to the Senator that this question is not without doubt, and I hope I have not stated it so positively as to give the impression that the matter is absolutely settled either by the courts or in my own mind. This is a question that requires discussion, and I am very glad we are having it.

THE DECISIONS.

But let me refer the Senator now to the decisions upon this question. In the case of McCulloch *v.* The State of Maryland the Supreme Court determined that the State of Maryland could not impose a tax upon the notes of the United States Bank in Maryland because that involved the destruction of one of the instrumentalities of the Government for the carrying out of the governmental power. The notes were property just as a railroad is property, and yet the court held that under the implied powers of the Constitution, namely, those powers which are essential to carry out the powers expressly conferred, the State of Maryland could not, in the exercise of its taxing power, tax those notes. It paralyzed the arm of the State when the State in any way reached out for that form of property.

It is true that in that case Chief Justice Marshall said that so far as real property was concerned the exemption would not apply, for instance, as to the bank building, for he contended that that was not essential to the operation of the bank. They could get another bank building; they could lease property and conduct their business upon it, and therefore real property did not come within the implied powers of the Federal Constitution as to the protection of a Federal instrumentality from destruction aimed at it by a State.

Extending the argument in that line, the case of the Union Pacific Railroad comes to my mind. In that case it was contended that the railroad was absolutely exempt from State taxation simply because it was incorporated under a national act for the purpose of carrying out the powers conferred by the Federal Constitution upon the General Government with reference to the mails, with reference to military defense, and with reference to the regulation of interstate commerce.

In that case the court, by five to three, determined that the railroad was not exempt; that there is a distinction between the powers conferred upon the instrumentality and the property owned by that instrumentality; that there is a distinction between the operations of the agent of the National Government and the property owned by that agent. And yet, if you analyze the decision, you will find that one of the judges—Justice Swayne, I believe—one of the five, in his concurring opinion, simply stated that it was clear that the Federal Government did not intend to exempt this property, and that in the absence of an express exemption the property was taxable by the State. So that reduced the majority opinion to four. The three dissenting judges held, not only with Justice Swayne, but they went further, and held that the railroad property, the track of the railroad, was absolutely essential to the operation of a Federal instrumentality; that it was not to be regarded simply as real property, such as the bank building owned by the United States Bank was to be regarded, but the track itself was the agency through which the powers were exercised, and that, therefore, it was impliedly, under the implied powers of the Constitution, exempt, though the exemption was not expressed by an act of Congress. So that three judges took that view and Justice Swayne took the view that it must be expressly exempted. So it is evident if that case had presented the case of an express exemption by the Federal Government of that railroad from local taxation the decision would have been four to four.

It is, therefore, an unsettled question, to be fought upon principle, and I insist upon it that the principle laid down in the case of McCulloch *v.* Maryland applies to this case; that if you can not permit a State to tax the powers of an instrumentality of the Federal Government—the powers conferred upon an agent of the Federal Government by the Federal Government—you can not tax the property that is absolutely essential to the execution of those powers, and that if the exemption is expressed in the statute, if it is clearly the intention of the Federal Government that the property shall not be impeded or harassed, it is exempt from State taxation. There are certain rights that can be waived by the Federal Government. In such case the Federal Government can waive the exemption from taxation, if it chooses to do so, by silence, and can submit that property to the taxation of a State; but if, by statute, it expresses the intention that the property shall be exempt, it is quite a different matter.

Mr. MALLORY. Mr. President, will the Senator permit me to ask him a question?

The PRESIDING OFFICER. Does the Senator from Nevada yield to the Senator from Florida?

Mr. NEWLANDS. Certainly.

Mr. MALLORY. I should like to inquire, in order to understand the Senator's position, if he contends that the transportation of merchandise, goods, and wares across State lines from one State to another is a governmental function—in other words, is interstate commerce a governmental function? It strikes me that that is a very important question in this discussion, because the powers which the Senator seems to claim for the General Government are powers that are dependent, I think, entirely

upon the General Government exercising the governmental function.

Mr. NEWLANDS. I do not know that that question has ever been determined, but I should conclude that the ruling of the court would be that the term "power to regulate interstate commerce" would include the power to enter into interstate commerce.

Mr. PLATT of Connecticut. To take possession of it exclusively? Is that the Senator's idea?

Mr. NEWLANDS. Yes; so far as transportation is concerned.

Now, I will just say a word more on this question. I am aware that some of my Democratic friends may take issue with me upon it, for all Democrats are inclined to adhere strictly to the reserved powers of the States.

Mr. BACON. If the Senator will pardon me, I want to express my gratification that some of the Republicans are taking this view.

Mr. NEWLANDS. But I wish to say that I think it just as Democratic to fully carry out and insist upon the full exercise of a national power as it is to insist upon the protection of the powers reserved to the States; and I believe that you will find from an examination of the authorities that these words "power to regulate interstate commerce" have been given a very broad significance, involving not only the power to regulate, but the power to create the instrumentality that is to enter into interstate commerce.

The PRESIDING OFFICER. What disposition does the Senator desire made of the joint resolution?

Mr. NEWLANDS. I ask that it lie on the table. I also ask permission to insert in the RECORD three pages of the hearing before the Senate Interstate Commerce Committee on December 16, 1904, pages 11 to 13, inclusive, containing the examination of Mr. Bacon.

The PRESIDING OFFICER. In the absence of objection, the request of the Senator from Nevada will be granted.

The matter referred to is as follows:

Senator NEWLANDS. Are you a lawyer yourself?

Mr. BACON. I am not a lawyer; I am a business man.

Senator NEWLANDS. Are you familiar with the rules the courts have laid down as to the determination of what shall be a just and reasonable rate?

Mr. BACON. I have followed the cases to some extent as they have arisen under the workings of the interstate-commerce act.

Senator NEWLANDS. I am not very familiar with them, but I understand that they have determined that a rate must be reasonable and not oppressive, and that you must have in view a return upon the capital that has been invested.

Mr. BACON. The Supreme Court has specifically decided that the revenues of a railroad company must be sufficient to afford a fair return upon the actual capital invested.

Senator NEWLANDS. Have these decisions ever determined what a fair return, in the shape of interest, shall be?

Mr. BACON. Each particular case has been taken up individually and considered on its own merits, and no definite percentage of interest or return upon the money invested has been indicated by the court as proper and right, so far as I have observed, but the court has decided that point in a general way—that it must be a fair return on the investment. That is something that may vary in different years.

Senator NEWLANDS. Has any court, to your knowledge, ever laid down a rule for determining the capital or value upon which the fair return, in the shape of interest, is to be computed?

Mr. BACON. No rule has been laid down, but different processes have been pursued in determining the cases before the courts—sometimes one method, sometimes two or three combined; but no rule has been laid down.

Senator NEWLANDS. Take, for instance, a continuous system of railways extending from the Atlantic coast to the Pacific coast, embracing perhaps as many distinct railroads as there are States through which it passes, each one of these railroads being subject to control by a local commission as to domestic rates, and also being under control by the Interstate Commerce Commission as to interstate rates: I ask how would it be possible, in each individual case before the Interstate Commerce Commission under this act, to determine the effect of a given rate upon the capital or value invested in each of these roads?

Mr. BACON. A case might be very complicated, as you suggest; still, it is not beyond human wisdom to arrive at a satisfactory conclusion. It may involve considerable time and the consideration of many figures, but it is not beyond human capacity, certainly.

Senator NEWLANDS. Do you not think that with the number of cases before the Interstate Commerce Commission, involving both classifications and specific rates, and also with the number of cases that may be under consideration before each one of the local commissions as to domestic rates, there would be considerable confusion as to whether or not a proper return upon capital or value could be had as a result of these changes?

Mr. BACON. I do not think there would be any difficulty of that kind. The cases are easily susceptible of solution with proper time and consideration to be given them. But it is my judgment that with this authority conferred upon the Interstate Commerce Commission it would operate very fairly toward the prevention of the exaction of discriminative or unreasonable rates.

Senator NEWLANDS. We all agree that that is what we want to have accomplished. The only question is as to the method.

Senator QUARLES. It would have to be worked out by the courts.

Senator NEWLANDS. Yes; but in these cases we would have perhaps ten different circuit courts operating at the same time in suits instituted by each one of these railroads, incorporated under the laws of different States, and each one of them complaining of a particular interstate rate fixed by the Interstate Commerce Commission. It strikes me that this would be likely to produce a great deal of confusion. If we could simplify this whole system, it would certainly be of great advantage.

Let me just suggest a line of thought I have been pursuing for some little time on this subject. It involves a radical change in existing conditions, but it seems to me that if it can accomplish good we ought gradually to reach out for it. It is this: We have here, say, 2,000 different railroads in this country——

Mr. BACON. Only about 600 operating railroads, however.

Senator NEWLANDS. Only about 600 operating railroads. A great many of these operating roads are classified and combined into systems, so that practically it may be said that eight or ten systems of railroads control all the mileage of the country. That is accomplished either through leases or holding companies or through traffic arrangements. As a matter of fact, however, we have this large number of corporations—although only 600 operating railroads, as you say—and these railroads are so unified that no more than eight or ten systems control them all.

Mr. BACON. Substantially, yes.

Senator NEWLANDS. That being the case, that being the evolution of railroading, why is it not well to recognize that fact and bring them under control?

Mr. BACON. That is just what we are seeking, Senator.

Senator NEWLANDS. Let me suggest right there, would it not be well for us, then, to frame a national incorporation act for interstate commerce, under which these various railroads now consolidated under one management—by devious devices that no one understands—can be incorporated, so that we shall have one capitalization fixed by the Interstate Commerce Commission or by the courts, and one system of rates to act upon, as well as one system of taxation to act upon? It seems to me that the evil of the present system is that, whilst the Supreme Court has determined that there must be a fair return upon value or capital invested, yet you can have as many valuations fixed as there are States, and you can have as many rates of interest fixed as there are States, according to conditions.

Then, upon the question of return; this return must be found after operating expenses and taxes are paid. And yet, under existing condi-

tions, we can have forty-five different systems of taxation, each of them variable according to the judgment of a legislature or according to the caprice of assessing bodies.

It strikes me if we could have a national incorporation act for purely interstate commerce and permit consolidation of these great corporations with a capitalization fixed by law or judicially, and then provide for a percentage tax upon gross receipts absolutely in lieu of all other taxes—national, State, county, or municipal (regarding these corporations as national machines for interstate commerce, the National Government would have the constitutional power to exempt them from State or local taxation)—and then provide that that tax shall be distributed by the United States among the various States according to some fair rule of distribution—according to trackage or volume of business—we would then fix absolutely the rate of taxation by one law, and that at the same time no State would be deprived of its revenue.

Thus upon this question of operating expenses and taxes we would secure certainty as to taxation, at all events.

The next step would be the fixing of the proper return upon capital invested. This law could fix the percentage of dividends to be allowed—whether 4 per cent, 5, 6, or 7 per cent, whatever it may be—and it could vary that return according to the degree of risk involved in the enterprise, etc., or it could leave the question of interest as a return on capital to the decision of the Interstate Commerce Commission or to the courts.

Those things being fixed with absolute certainty (the taxes to be paid to the Government and the dividends paid to the operators), then you have remaining only the question of operating expenses, and it seems to me you would then have one body that would fix these rates and you would not be subject to the varying judgments of forty-five different commissions and forty-five different courts. What do you think of that, Mr. Bacon?

Mr. Bacon. That is a very comprehensive plan, Senator, and there is much merit in it, but it will take many years to work that out in legislation.

Senator Tillman. I want to suggest to my friend from Nevada that he put this statement in the Record, for it is the most magnificent generalization that has ever come before me. So I hope he will repeat this statement in the Senate Chamber, because it will be lost to the public unless put in the form of a speech in the Senate on this general subject.

Senator Newlands. It will be in the record of the proceedings of this committee to-day, but I should like Mr. Bacon and his associates to look into that question; for while we may pass something of this kind as a temporary measure, I do not believe it will work satisfactorily as such. It strikes me that the minds of the shippers, as well as of the legislators of the country, ought to be directed to some plan of unifying and simplifying the entire railroad system of the country.

Mr. Bacon. That is entirely worthy of consideration with reference to the future, but it will take a long time to work it out. But here we have before us a very simple plan which has been evolved during the discussions of five years in regard to this class of legislation, and it seems to me that it would not be best now to take up any such comprehensive and general plan. Senators may work it out for themselves.

Senator Foraker. You would not indorse the plan suggested by the Senator from Nevada?

Mr. Bacon. Not on the moment's consideration. I am very glad, however, to have that suggestion.

Senator Foraker. So am I, but I should want to give it further consideration.

EXHIBIT "A."

United States Senate Committee on Interstate Commerce,
January 16, 1905.

ADDITIONAL STATEMENT OF MR. EDWARD P. BACON.

Senator Newlands. Mr. Bacon, I understand your position to be that you would like this bill (the Quarles-Cooper bill) passed, but you propose to follow it up by measures to be urged hereafter, with the expectation in the end to reach a scientific and comprehensive plan covering whatever is best in the way of railway legislation.

Mr. Bacon. That is my idea exactly.

Senator Newlands. I desire to question you a little about such a general and comprehensive plan, not with a view to delay the consideration of this particular bill, but with a view to seeing whether this bill, if it should pass, will fit into the general plan.

Mr. BACON. It is the groundwork of the plan.

Senator NEWLANDS. I questioned you the other day when you were before the committee regarding a plan that I had in mind for unifying and simplifying the railway systems of the country through a national incorporation law.

Mr. BACON. I was very much interested in it.

Senator NEWLANDS. That plan involved the valuation of the railroads by the Interstate Commerce Commission; a fixed percentage upon gross receipts, so that taxes would be certain, such taxes to be distributed among the States, and a return to the stockholders of not less than 4 per cent on the valuation fixed by the Commission, so as to make dividends certain, thus leaving the profits from any increase in business to go largely to the betterment of the roads, the increase of wages, or the reduction of rates. Now I desire to ask you whether you have thought over that plan at all since you were here last.

Mr. BACON. I have read your remarks on that subject in the Senate with a great deal of interest, and I can say that they meet my hearty concurrence, and that great good will come from it if it can be worked out. But, as I said before, when you were interrogating me before the committee, it will take time to accomplish it. However, it is a good thing to have it under consideration, and I think the more it is studied and considered the more it will commend itself to the minds of those who study it. But it will take a long time to bring it about.

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